

**MISSOURI WELL INSTALLATION BOARD MEETING
FEBRUARY 22, 2010
COUNTRY CLUB HOTEL & SPA
301 CAROL ROAD
LAKE OZARK, MISSOURI
MEDITERRANEAN B**

OPEN MINUTES

The regular meeting of the Well Installation Board was held on February 22, 2010 at the Country Club Hotel & Spa in Lake Ozark, Missouri. A quorum being present, Mr. Robert Lawrence, Chairman, called the meeting to order at 10:00am.

Board Members Present: Mr. Robert Lawrence, Chairman, Mr. Fred Schoen, Vice-Chairman, Mr. Danny Flynn, Ms. Annetta St. Clair, and Mr. Joe Gillman

Board Members Absent: Ms. Harriet Beard and Mr. Bob Broz

Legal Counsel Present: Mr. Don Willoh, Assistant Attorney General

DNR Staff Present: Mr. Steve Sturgess, Ms. Beth Marsala, Ms. Sheri Fry, Mr. Chris Wieberg and Ms. Tracy Ray

Guests Present: Ed St. Clair, Gerald Buechting, David Schnell, Lindell Lindsey, Mike Woolsey, James Cook, Gary Webber, Kevin Pelton, Ray Pelton, Bill Blomberg, Bill Burge, Doc McClanahan, Norman Pelton, Dale Brown, Brad Hoyt, & Rex Trent.

INTRODUCTIONS

Mr. Lawrence welcomed everyone to the meeting and introduced himself. He asked the Board to introduce themselves, followed by the audience.

ELECTION OF A CHAIR AND VICE-CHAIR

Ms. St. Clair nominated Mr. Robert Lawrence to serve as chairman. Mr. Flynn seconded. A voice vote was taken. Motion passed. Mr. Flynn nominated Mr. Fred Schoen to serve as vice-chairman. Ms. St. Clair seconded. A voice vote was taken. Motion carried.

MINUTES OF NOVEMBER 6, 2009 BOARD MEETING

The Chair asked if there were any changes or corrections to the minutes from the November 6, 2009 meeting. Ms. St. Clair moved to accept the minutes as written. Mr. Schoen seconded the motion. Motion carried.

PERMIT APPEALS

The Chair recognizes Ms. Sheri Fry.

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Sheri presented each appeal and then gave the Wellhead Protection Section's recommendation for resolution.

The first appeal was from Mr. David Tompkins. Mr. Tompkins asked for his permit to be cancelled and it has since expired. The Section's recommendation is as follows: Mr. Tompkins should be allowed to take the test and submit proof of financial responsibility in order to become permitted again. Mr. Tompkins has no outstanding violations.

Mr. Fred Schoen moved to accept the recommendation made by the Section. Mr. Flynn seconded. Motion carried.

The second appeal was from Mr. Greg Clark. Mr. Clark's permit expired on 11-18-09. The Section recommends that Mr. Clark be allowed to take the test and submit proof of financial responsibility in order to become permitted again.

Ms. St. Clair moved to accept the recommendation made by the Section. Mr. Schoen seconded. Motion carried.

The third appeal was from Mr. Scott Peterman. Mr. Peterman's permit was cancelled for failure to renew. The section recommends that Mr. Peterman be allowed to take the test and submit proof of financial responsibility in order to become permitted again.

Mr. Schoen made a Motion to accept the recommendation of the Section. Mr. Flynn seconded. Ms. St. Clair voiced a neigh vote. Motion carried.

The fourth appeal was from Mr. Bill Burge on behalf of Mr. Adam Hemby. Mr. Hemby has worked for Mr. Burge since January of 2009 and wants to become permitted utilizing his prior experience in lieu of the two year apprenticeship requirement. Mr. Schoen inquired if it would be a problem for Mr. Hemby to continue this work for the rest of the year and then take the test as if he were a regular non-restricted contractor.

Mr. Schoen made a motion that Mr. Hemby be allowed to take the test in January 2011 and be licensed as a regular driller without being an apprentice for two years. There was not a second to this motion so the motion failed. Further discussion ensued.

The section recommended that to be consistent with recommendations on similar appeals, Mr. Hemby should be required take the test and follow the apprentice rules.

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Mr. Flynn made a motion to accept the recommendations of the Section. Ms. St. Clair seconded. Motion carried.

SPECIAL AREA 2 UPDATE

The chair recognizes Mr. Chris Wieberg.

Mr. Wieberg gave a brief presentation on updates to the Special Area 2 map. He updated the board on the three new quarter sections that have been added as impact areas in the Jasper/Newton County area. He also provided the board with reasoning behind creating an advisory for several other sections in the area where there is information indicating that the upper aquifer is contaminated with lead or cadmium. The information received is valid but does not meet the criteria in the rules to create an impact area. The section believes that providing the advisory to the drillers and others is the best way to deal with the situation and still be protective of the groundwater..

RULE UPDATES

The chair recognizes Steve Sturgess.

Mr. Sturgess addressed the updates to the Monitoring Well Rules. He stated that there have been some legal questions arise in regard to the monitoring well rules by the Petroleum Storage Tank Insurance Fund (PSTIF). PSTIF has asked for a legal opinion as to whether the board has the authority to regulate soil borings. The Department attorneys are reviewing the law and rule language in order to provide a legal opinion on the matter. The Department is requesting that the board consider delaying a vote on any monitoring well rules until the next meeting.

Mr. Schoen made a motion to table this topic until a later meeting. Mr. Flynn seconded. Motion carried.

The chair recognized Ms. Sheri Fry.

Ms. Fry gave an update on the “in addition” to rule. During a review of the Missouri Well Construction Rulebook on the Missouri Secretary of State’s webpage, the section found that outdated certification and registration forms are included at the end of Chapter 6. The forms are not actually part of the rule, but the forms were published in the *Missouri Register* at one time. The section contacted the Missouri Secretary of State’s office and asked how to remove the forms from the code. The resolution is to file an “in addition” rulemaking. There is no public hearing or interagency review required for an “in addition.” After all signatures are obtained by the Department, it goes to the Joint Committee on Administrative Rules and the Secretary of

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State's office and is published in the *Missouri Register*. This action will remove the forms from the code. The section is asking the board to approve going forward with this process.

Mr. Schoen made a motion to approve this rulemaking. Ms. St. Clair seconded. Motion carried.

The Chair recognized Ms. Marsala.

A Request to Begin to do amendments to the Heat Pump rule has been forwarded to management. These rules have not been amended since 1994 and new technology need to be addressed in the rules. The Section would like the board's approval to move forward with this rulemaking if management approves.

Mr. Schoen made a motion to allow the Section to move forward. Ms. St. Clair seconded. Motion carried.

The Chair recognizes Ms. Sheri Fry.

Ms. Fry gave updates to the Apprentice rulemaking. The new rule went into effect on March 1, 2009. During this past year some unanticipated problems have arisen. New language has been drafted to address these issues and a stakeholder meeting was held on February 2, 2010 to receive comments on the draft proposal.

One of the first comments made was that the current rule does not address out of state contractors that apply for a permit. These applicants have no proof of experience in their home state because the home state does not regulate that type of work. In the current rule it states that the contractor would have to have a license in another state or the contractor must be an apprentice. Comments varied from allowing these contractors to test and provide proof of financial responsibility to making the contractor become an apprentice as current rule requires. One individual stated that if the contractor is not able to show actual experience then the contractor should not be allowed to have a permit at all.

Staff recommends that the applicant be allowed to take test, submit proof of the required number of installations in the form of the bills given to customers or invoices, and submit proof of financial responsibility.

Other comments received regarded the adequacy of the number of initial installations required by rule. The commenters, depending on their view point, wanted the number either raised or lowered in order to document the work.

Staff is not recommending making any changes to this section of the rule.

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Several commentors said that the current rule does not take into account when a contractor was previously permitted with the state, but the permit had been cancelled. The suggested resolutions varied from requiring a test with a testing fee of \$1000.00 as long as the permit was in good standing when the permit was cancelled, to allowing the contractor to take test and pay the regular fees. Some suggested no test/no bond just let the contractor pay the permit fee. A statement was made that in the state of California a permittee is allowed to suspend their permit for a prescribed length of time. Then as long as they pay a fee, they can get permitted again with no penalty. However, they can only do this three times in a lifetime.

Staff recommended that anyone who was previously permitted in Missouri be allowed to take the test and submit proof of financial responsibility.

One attendee would like to see the rule changed so that if you currently hold one type of permit you should not be required to submit the proof of financial responsibility to acquire another type of permit. For example if you have a water well permit and you want to get a monitoring well permit the rule currently says you have to have proof of financial responsibility. Staff is not recommending making any changes to this section of the rule.

A comment was received after the stakeholder meeting regarding forfeiture of the proof of financial responsibility. If it is forfeited for outstanding violations and the well has been fixed and it didn't take the full \$25,000 what happens to the remainder of the money? The section has looked at other department's statutes and rules and staff is recommending including language in this draft that says "Monies forfeited from proof of financial responsibility and deposited in the groundwater protection fund will be used by the department to remediate violations subject to the following guidelines: violations covered by the forfeited proof of financial responsibility shall receive first priority and other violations shall receive priority on the basis of their potential for groundwater contamination or other damage by order of the board."

Mr. Flynn made a motion that the Board accepts the recommendations presented by staff with one change. The board wants out of state contractors who do not have a permit similar to what they are applying for to adhere to the apprenticeship program just as contractors within the state do. Ms. St Clair seconded. Motion carried.

Ms. St. Clair made a motion to recess for lunch. Mr. Schoen seconded. Motion carried

BRANCH CHIEF'S UPDATE

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The Chair recognized Steve Sturgess

Mr. Sturgess updated the board on status of vacant board member positions, information on the budget, legislation and other items currently affecting the Branch.

ENFORCEMENT UPDATE

The Chair recognized Ms. Sheri Fry, Wellhead Protection

This enforcement update was presented based on the calendar year of 2009. There were 52 Letters of Warning issued; 9 Administrative Notices of Violation issued; 77 Administrative Notices of Violation resolved; No field Notice of Violation issued; 2 field NOV(s) resolved; 249 Administrative cases assigned (forms & fees or no permit); 157 Administrative cases resolved; 97 field cases assigned; 55 field cases resolved; 14 probationary agreements signed; 4 referrals to the Attorney General's office for litigation (3 for forms & fees; 1 for operating without a permit); 2 settlement agreements were signed; 111 permits not renewed.

MISSOURI WATER WELL ASSOCIATION COMMENTS

The Chair recognized Mr. David Schnell, Schnell Drilling.

No comments at this time.

OTHER BUSINESS

PUBLIC COMMENT AND CORRESPONDENCE

No comments.

FUTURE MEETING

Ms. St. Clair moved that the August meeting of the Well Installation Board be held on August 13, 2010, at 10:00 a.m. in Springfield, Missouri at the Springfield Regional Office. Mr. Schoen seconded the motion. Motion carried.

ROLL CALL VOTE FOR THE NEXT CLOSED SESSION

Ms. St. Clair made a motion that the Well Installation Board meet in closed session at 9:30 a.m. at the next regular meeting, May 7, 2010 for the purpose of discussing matters protected from disclosure by law as provided for in Section 610.021, RSMo., including but not limited to: legal

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actions, pending litigation, and attorney-client privileged matters with the board's attorney. Mr. Schoen seconded the motion. A roll call vote was taken as follows: Mr. Flynn, yes; Mr. Gillman, yes; Ms. St. Clair, yes; Mr. Schoen, yes; Mr. Lawrence, yes. Motion carried.

Adjournment

Ms. St. Clair made a motion to adjourn. Mr. Schoen seconded. Motion carried.